

### **REMARKS**

Reconsideration of this application as amended is respectfully requested.

In the Office Action, claims 1-76 are pending and rejected.

In this response, claim 55 has been cancelled. Claims 1, 25, 54 have been amended. No new matter has been added. Thus, claims 1-54, and 56-76 remain pending.

### **Interview Summary**

Applicants thank Examiner Madhu Khanna and her Supervisory Examiner for granting a telephone interview with Applicants' counsel on February 25, 2009. The interview included discussions of the Office Action's 35 U.S.C. §103 rejections of claim 1, 25, 54 in view of their respective alleged references. Further, a proposed set of amendments were extensively discussed. Agreement was reached that the proposed set of amendments appeared to overcome the cited reference, pending further examination.

Applicants respectfully submit that claims in this response substantially reflect the proposed set of amendments and the inputs provided by the Examiners, and are patentable over the cited references.

### **35 U.S.C. §103 Rejections**

In the Office action, claims 1-3, 5-6, 8, 9, 11, 13-17, 19-26, 28, 29, 31, 33-37, 39, 40, 43-50, 53 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Kleinpeter III et al. (US Patent No. 6,907,463, hereinafter "*Kleinpeter*") in view of Chiu (US Pub. No. US2003/0158958, hereinafter "*Chiu*"), in view of Schleicher et al. (US Patent No. 7,047,406, hereinafter "*Schleicher I*"), and in further view of Jandel (US Patent No. 6,763,371, hereinafter "*Jandel*").

Claims 4, 10, 18, 27, 30, 38, 41-42 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over *Kleinpeter-Chiu-Schleicher I-Jandel* in view of Son et al. (US Pub. No. US 2003/0126277, hereinafter "*Son*").

Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu-Schleicher1-Jandel* in view of Schleicher et al. (US Pub. No. US2002/0138576, hereinafter "*Schleicher2*").

Claims 12, 32, 51, 52 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu-Schleicher1-Jandel* in view of Perkes et al. (US Pub. No. US2002/0194601, hereinafter "*Perkes*").

Claims 54, 57, 59-61, 63-65, 71-72 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son* in view of Doyle (US Patent No. 7,310,679, hereinafter "*Doyle*").

Claims 56, 62, 67-70 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son-Doyle* in view of *Schleicher1*.

Claims 58 and 66 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son-Doyle* in view of *Perkes*.

Claims 73-75 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son-Doyle* in view of *Chiu*.

Claim 76 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son-Dolye-Chiu* in view of *Schleicher2*.

Applicants do not admit that the above references are prior art and reserves the right to challenge these references at a later date.

### **The References cited in the Office Action**

*Kleinpeter* teaches a method to exchange files between users in a network environment. This method includes the steps of executing a software agent on multiple users' computing systems. These software agents establish a connection from their respective computing systems when logging into a network environment. An agent server, executed on the network environment, directs the software agents to establish direct connection between their respective computing systems in response to file requests from various users (See Abstract). The agent

server determines a computer system having the requested file, and instructs the computer system retaining the requested file on how to transfer that file to the requesting user. In an event that a file transfer is interrupted, the server can determine what point in the file the transfer has been interrupted. (*Kleinpeter* column 2, lines 41-60).

*Jandel* teaches a server unit in a communications network for receiving information from client units. The information includes at least part of the state information about a distributed interactive application. The server unit includes a device for storing application state information, and a device for forwarding the state information received from the client to at least one other node in the network and for transmitting at least part of the information stored in the storing device to the client. (See Abstract)

*Chiu* teaches an electronic content delivery system using a network of end-user devices. Each end-user device has storage capability for storing contents in a distributed fashion, and for making the contents available to other devices in a P2P fashion. (See Abstract)

*Schleicher1* teaches a method and system for electronically delivering files over a public network. The method and system enable secure and reliable peer-to-peer file sharing between two client nodes. The method and system also enable subscription-based decentralized file downloads to the client nodes. (See Abstract)

*Schleicher2* teaches a method and a system for generating revenue in a peer-to-peer file delivery network that includes a server node and client nodes. Subscription-based content may be made available for free or for a fee. If the content is fee-based, then a fee may be charged to the users for receiving or opening the fee-based content. The fee charged may be in addition to, or in lieu of, the fee charged to the providers of the subscription-based content. (See Abstract)

*Son* teaches an apparatus for providing a multimedia streaming service by using a P2P approach including a number of clients that distribute and store multimedia data, and a number of servers that manage a multimedia data catalog. The client searches for multimedia data in its local disk, and calls for the data catalog to the server if there is no corresponding data in the local disk. The client then searches for the multimedia data catalog, and receives data from a client that stores the corresponding data. In case no clients store the corresponding data, the client tries to receive data from the server. (See Abstract)

*Perkes* teaches a system, method and program for delivering content utilizing a master agent. A peer-to-peer connection is provided via a network between at least a broadcasting agent and a viewing agent to transmit contents. In addition, *Perkes* teaches collecting, collating, organizing and analyzing information about a consumer's computer and peripheral usages, and using the information to select, download and coordinate the presentation of advertising and viewing content. (See Abstract)

*Doyle* teaches a plurality of wireless clients that can operate in a shared manner using a contention based protocol. The clients can be placed into a contention free mode of operation, which prevent the clients from initiating a data transfer. Once the wireless clients are prevented from initiating access to the wireless network, a video gateway can transmit video content in a deterministic manner to some of the wireless clients. (See Abstract)

### References Distinguished

Applicants respectfully submit that *Kleinpeter*, *Jandel*, *Chiu*, *Schleicher1*, *Schleicher2*, *Perkes*, *Son* and *Doyle*, individually or in combination, do not teach or suggest all pending claims limitations. To render a claim obvious, the cited references must teach or suggest each and every element of the claim.

Independent claims 1 and 25, which are rejected based on *Kleinpeter* in view of *Chiu*, *Schleicher1*, *Jandel*, recite, in part, " **receiving from each client a prioritized list of media items selected from the online catalog**" and "**monitoring the prioritized lists of the media items received from the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients.**"

According to *Kleinpeter*, its users submit a list of requested files to a central web server, and an agent server organizes the requested files and matches them with the nearest available agents with the requested files (*Kleinpeter* column 1, lines 58-64). *Kleinpeter* does not disclose a prioritized list of requested files. As illustrated in its Figure 3B, *Kleinpeter*'s agent server receives from agents various file transferring results, such as "success", "active agent cannot communicate with the passive agent", "file does not exist", "error in getting file", or "client never got file", etc.

However, these results are generated when the transferring of the requested files are completed, either successfully, or unsuccessfully. Therefore, generating these results cannot be construed as monitoring the lists of requested files during the transferring of the files. Therefore, *Kleinpeter* does not teach or suggest "a prioritized list", nor does it teach or suggest "monitoring the prioritized lists of the media items received from the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients."

Likewise, in *Chiu*, each user makes a request to a service provider for content information, and the service provider initiates a transfer from a first end-user's device to a second end-user's device. Even though *Chiu's* service provider continuously keeping track of the whereabouts of any content information and keeping track of the progress of the download (*Chiu* paragraph [0004]), it does not monitor any prioritized list of content information. Therefore, *Chiu* does not teach or suggest "a prioritized list", nor does it teach or suggest "monitoring the prioritized lists of media items received from the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients."

In *Schleicher1*, a P2P client application 22 allows the user to publish and share files over the network. If a user places a file into the shared folder 58, the file is made publicly available on the network for searching by other client nodes 14. The file is also made publicly available on the network by transferring a copy of the file from the publishing node to the server node. The file may then be served by the server node (*Schleicher1* column 5, lines 41-51). The file can also be privately sent to the receiving client. If the receiving client nodes are logged into the server node, then a peer-to-peer connection is established between the two nodes and the file is sent directly to the receiving node without first going through the server node (*Schleicher1* column 5, lines 56-64). Thus, *Schleicher1* at most teaches transferring the file from the server node or from a client node. However, *Schleicher1* does not teach or suggest monitoring a prioritized list of media items received from the clients to determine whether to transfer the media items from the central repository or from some of the clients.

In *Jandel*, its priority information lists the client's priorities regarding different application objects provided by the application access servers. In a real-time gaming

environment, the movement of a friendly player or a hostile player should be given a high priority in a player's priority list, while things happening farther away should be given a low priority. (*Jandel* column 5, lines 53-58, and column 6, lines 22-25). Based on a client's priority list and a flag, the application access server determines whether or not a certain object needs to be sent to the client from the application access server. However, *Jandel* does not teach or suggest these application objects being a list of media items selected from an online catalog. Nor does *Jandel* teach or suggest monitoring a priority list of media items selected from an online catalog. Thus, *Jandel* does not teach or suggest "monitoring the prioritized lists of media items received from the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients."

Since the cited references, whether considered alone or in combination, fail to teach "monitoring the prioritized lists of media items received from the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients," claims 1 and 25 are allowable over the cited references.

Moreover, *Jandel* teaches away from combination with peer-to-peer references, such as *Kleinpeter*, *Chiu* and *Schleicher I*. The Office Action argues that *Jandel* is relied upon for teaching the claimed feature of a prioritized list and not a peer-to-peer architecture. However, according to MPEP §2141.02, "prior art must be considered in its entirety, including disclosures that teach away from the claims." Further, a prior art may be considered to teach away when "a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference." *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

The Office Action provides that the motivation to combine *Kleinpeter-Schleicher I-Chiu* with *Jandel* is to "improve the performance of the system." With respect to the three references combined with *Jandel*, *Kleinpeter* discloses "point-to-point" connections (column 1, line 55); *Schleicher I* discloses "peer-to-peer" file sharing (column 2, line 46); and *Chiu* discloses a "peer-to-peer" network (column 1, paragraph [0003]). In comparison, *Jandel* states that "peer-to-peer synchronization has obvious scalability problems since the network load is proportional to the square of the number of players," and "peer-to-peer games over the Internet suffer from .

unpredicted delays and frequently collapse because of loss of synchronizations." *Jandel* further suggests that "peer-to-peer synchronization is best adapted to small networks, with communication over relatively short distances and between a limited number of users." (*Jandel* column 2, lines 4-20). Thus, *Jandel*, when considered in its entirety, contains disclosures that teach away from utilizing its disclosures in a peer-to-peer environment and combining with peer-to-peer references *Kleinpeter-Schleicher1-Chiu*.

Further, upon reading the above restrictions posed by the peer-to-peer synchronization, a person of ordinary skill would be taught and suggested that applying *Jandel*'s teachings, including its priority information lists, in a peer-to-peer environment would suffer the same scalability problems with unpredicted delays and frequently collapses. Thus, the person would be discouraged from following the path set out in *Jandel* for the purpose of combining *Jandel* with any peer-to-peer references in order to improve the performance of the system. Thus, *Jandel* teaches away from utilizing its disclosure in a peer-to-peer environment, and does not provide a motivation to combine with peer-to-peer references *Kleinpeter-Schleicher1-Chiu*.

Since independent claims 1 and 25, as well as their respective dependent claims, essentially recite using peer-to-peer connectivity, there is no motivation to combine *Jandel* with any of the other cited references in order to provide the benefits as suggested by the Office Action. Accordingly, as least for the above reasons, Applicants respectfully submit that the invention as claimed in independent claims 1, 25, as well as their respective dependent claims 2-24 and 26-53, are not rendered obvious by *Kleinpeter* in view of *Schleicher1*, *Chiu* and *Jandel*, and respectfully request the withdrawal of the above rejections under 35 U.S.C. 103(a).

It may be noted that with respect to the remaining references, *Schleicher2* discloses a priority level for delivery a particular content (*Schleicher2* paragraph [0027]). However, the priority level is for bandwidth allocation for a particular content, therefore it is not a prioritized list of subscription-based content. Thus, *Schleicher2* does not disclose a prioritized list, nor does it disclose monitoring the prioritized lists of the users during transferring of the media items. Lastly, neither *Son* nor *Perkes* teaches or suggest monitoring prioritized lists during transferring of the media items.

Therefore, the paragraphs cited in the Office Action with respect to *Kleinpeter*, *Chiu*, *Jandel*, *Schleicher1*, *Schleicher2*, *Perkes* or *Son*, individually or in combination thereof, do not teach or suggest all limitations of independent claims 1 and 25. In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waving any argument regarding that claim.

Since none of the cited references teach or suggest each and every element of claims 1 or 25, claims 1 and 25 are allowable over each reference, whether considered alone or in combination. Claims 2-24, which depend from claim 1, and claims 26-53, which depend from claim 25, are allowable at least for depending from an allowable base claim, and potentially for other reasons as well.

Thus, Applicants respectfully request the withdrawal of the rejections of the above claims under 35 U.S.C. 103(a) over *Kleinpeter*, *Chiu*, *Jandel*, *Schleicher*, *Perkes* or *Son*, individually or in combination thereof.

Independent claim 54, which is rejected over *Kleinpeter-Jandel-Son* in view of *Doyle*, includes the language "determining media items available on a plurality of devices having **peer-2-peer** connectivity to one another;... selecting a particular media item to be delivered to a first device of the plurality of devices based on the priority lists and the media items determined to be available on the first device, **wherein the selection grants high priority to any of the plurality of devices with no media items selected from its respective prioritized list to watch...**"

As discussed above, *Jandel* teaches away from utilizing its disclosure in a peer-to-peer environment. Thus, there is no motivation to combine *Jandel* with P2P references *Kleinpeter* and *Son*, in order to provide the benefit (to improve the performance of the system) as suggested by the Office Action. Thus, the above combination cannot render obvious the Applicants' claim 54.

Further, the Office Action provides that the motivation to combine *Kleinpeter-Jandel-Son* with *Doyle* is to "give a client a flawless viewing experience" (page 26 of the Office Action). The Office Action characterized Applicant's prior Response as arguing that *Doyle* is non-analogous art (Office Action page 4, item 6). *Doyle* may or may not be non-analogous art, but Applicants



argued in the prior Response that there was no motivation to combine *Doyle* with *Kleinpeter-Jandel-Son*.

The Office Action asserts that *Doyle* is relied upon to allegedly teach the claimed feature of granting high priority to any of the plurality of devices with no media items selected from its respective prioritized list to watch, and not the aspects of peer-to-peer architecture. Applicants respectfully submit that *Doyle* does not teach or suggest the above element of claim 54. In *Doyle*, the clients that have near empty video buffers would be given a higher priority than those clients that have near full video buffers (*Doyle*, column 6, lines 60-62). However, *Doyle* does not teach or suggest that a client having near empty video buffers is a client with no media items selected from a prioritized list to watch. Thus, *Doyle* does not disclose granting high priority to any of the plurality of devices with no media items selected from its respective prioritized list to watch, as recited in claim 54.

Further, *Doyle* also teaches away from utilizing its disclosure in a peer-to-peer environment. As discussed above, MPEP recites that prior art must be considered in its entirety, including disclosures that teach away from the claims. In addition, according to MPEP §2145, proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference.

*Doyle* teaches determining a priority for transmitting data to the clients when the clients are in a contention free mode of operation (Figure 7). In other words, the wireless clients are placed in a contention free mode of operation before determining a specific order of transmitting data from the gateway 110 to the clients (*Doyle* column 6, lines 38-63). In the contention free mode of operation, the wireless clients are prevented from initiating accesses to the wireless network, and only the gateway 110 is allowed to initiate access and transmit data to these clients (*Doyle* column 2, lines 30-33). Thus, in order to grant priority to the wireless clients for data transmission, *Doyle's* clients cannot initiate any data transmission with other wireless clients, and cannot transfer data from one client to another client.

Accordingly, combining *Doyle* with peer-to-peer references, which allows clients initiating data transmission with other clients, would render *Doyle* unsatisfactory for its intended purpose of the "content-free mode of operation" that prevents the clients from initiating a data transfer. In addition, combining peer-to-peer transmission during content-free transmission would also change *Doyle*'s principle of operation, which determines priority of transmission during the content free mode. Thus, the teachings of *Doyle* are incompatible with a P2P system, and there is no motivation to combine *Doyle* with any of the other cited references in order to provide the benefit of "to give a client a flawless viewing experience."

Hence, Applicants respectfully submit that independent claim 54 as well as its dependent claims 56-76 are not rendered obvious by *Kleinpeter-Jandel-Son* in view of *Doyle*, and respectfully request the withdrawal of the above rejections under 35 U.S.C. 103(a).

In view of the above remarks, a specific discussion of the dependent claims of claim 54 is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waving any argument regarding that claim.

Since none of the cited references teach or suggest each and every element of claim 54, claim 54 is allowable over each reference, whether considered alone or in combination. Claims 55-76, which depend from claim 54, are allowable at least for depending from an allowable base claim, and potentially for other reasons as well.

For example, claim 58 recites, in part, "determining a device least most recently served by delivery of a media item." The Office Action interprets *Perkes* as to teach the criteria for "determining when a file should be transferred, specifically based on the past history of the user, and not to teach the reason why (e.g. optimizing bandwidth) this determination is made" (Office Action, page 5). Applicants respectfully submits that *Perkes*' delivery scheduler uses the history of recent logged activity and past history stored in the user's profile to determine the optimum time for the download (*Perkes* paragraph [0058]). However, *Perkes*' delivery scheduler determines when a file should be transferred. *Perkes* does not teach or suggest which computer should be scheduled for the receiving of the file. Thus, *Perkes* does not teach or suggest

determining a user's device least most-recently served with download. Therefore, for any of these reasons, claim 58 is allowable over *Kleinpeter, Jandel, Son, Doyle* and *Perkes*.

Thus, Applicants respectfully request the withdrawal of the rejections of the above claims under 35 U.S.C. 103(a) over *Kleinpeter, Jandel, Chiu, Schleicher1, Schleicher2, Perkes, Son* and *Doyle*, individually or in combination thereof.

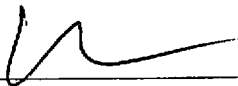
**Conclusion**

A Notice of Allowance is therefore respectfully requested. Should the Examiner find that a telephone or in-person conference would expedite the prosecution of this Application further, he is invited to contact the Applicants' counsel at the contact listed below for such a conference.

Please charge any deficiency in fees or credit any overpayment to our Deposit Account No. 50-2207, from which the undersigned is authorized to draw.

Dated: February 27, 2009

Respectfully submitted,

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